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No. 71-668

In the Supreme Court of the United States

OCTOBER TERM, 1971

PEDRO RIVERA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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Washington, D.C. 20530.

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After a trial by jury in the United States District Court for the Southern District of New York, petitioner, and co-defendants Marquez and Angelet, were convicted on two counts of causing interstate travel to distribute gambling proceeds and to commit extortion, and on one count of conspiracy to commit the substantive offenses, in violation of 18 U.S.C. 1952 and 371, respectively. He was sentenced to eighteen months' imprisonment on each count, the terms to run concurrently. The court of appeals affirmed. (Pet. App. A).

On December 7, 1969, petitioner, an employee of co-defendant Marquez in a numbers operation in New

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York City, told one Nieves, a subordinate employee, that Nieves was accused of cheating on the operation and that Marquez wanted to see him. The following day, petitioner drove Nieves and Nieves' father-in-law to the headquarters of the operation. Marquez and co-defendant Angelet, another person associated in the operation, demanded that Nieves pay them $14,000. Nieves said that all he had was about $7,300, which was in Puerto Rico. He was told to go there and get it. Petitioner was present during a part of this confrontation. The next day, after petitioner had collected approximately $1,750 from Nieves and the father-in-law, Nieves flew to Puerto Rico. Upon Nieves' return, two F.B.I. agents met him at the airport and arranged to cooperate with him when he delivered the money to Marquez. Pursuant to instructions from petitioner, Nieves delivered the money to Marquez at his headquarters. The agents entered and arrested Marquez, but failed to recover the money. Angelet and petitioner were later arrested (Pet. App. A 4-5).

1. Petitioner argues that the evidence does not support his conviction. This, however, is belied by the record. Petitioner told Nieves that he was accused of cheating and took him to the meeting with Marquez. He participated in at least part of the conversation in which Nieves and the father-in-law were threatened. After Nieves returned from Puerto Rico petitioner instructed him to bring the money to the headquarters of the operation. There was nothing sporadic or casual about petitioner's involvement in the business enterprise of gambling. He had a defi-

nite place in the hierarchy, below Marquez and above Nieves. He thus participated with Marquez in causing Nieves to travel in interstate commerce to facilitate carrying out the unlawful activities of gambling and extortion.

The travel here was caused by petitioner and his co-defendants in much more direct fashion than occurred in *Rewis* v. *United States*, 401 U.S. 808, where the government was seeking to establish a violation of 18 U.S.C. 1952 from the act of patrons crossing state lines. This Court recognized in *Rewis* that there might be "occasional situations in which the conduct encouraging interstate patronage so closely approximates the conduct of a principal in a criminal agency relationship that the Travel Act is violated" (401 U.S. at 814). This is such a situation; here the principal-agent relationship was clearly defined. Marquez, with the assistance of petitioner, ordered Nieves to go to Puerto Rico and return with the money. While no doubt, Marquez would have been equally satisfied had the money been in New York, he knew that it was in Puerto Rico and told Nieves to get it.[1] Nor does it matter that Nieves was also the victim of the extortion scheme. As pointed out in *United States* v. *De Cavalcante*, 440 F. 2d 1264, 1268 (C.A. 3), one may cause a crime to be committed, even through an inno-

[1] Equally strained is petitioner's reliance upon *United States* v. *Hawthorne*, 356 F. 2d 740 (C.A. 7); there a Travel Act violation was charged on the basis that the defendant had moved his family to another state, where he thereafter engaged in a gambling enterprise.